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No. 84-823 (6)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

UNITED STATES OF AMERICA,

Petitioner

v.

JOHN DOE NO. 462,

Respondent

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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RESPONDENT'S MEMORANDUM SUGGESTING THAT THE CAUSE IS MOOT

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On January 21, 1985 the government's petition for a writ of certiorari was granted. On March 1, 1985 petitioner's brief was filed. Respondent's brief is due April 1, 1985.

Certiorari was granted in this case to resolve the issue of whether the Fifth Amendment privilege against self-incrimination protects an individual from the compelled production of his personal documents pursuant to grand jury subpoena. As discussed herein, recent developments in this case have rendered this cause moot. Respondent has waived

his Fifth Amendment privilege and provided petitioner with the very documents that are the subject of the case now pending before this Court.

On January 9, 1985, respondent was indicted for various offenses pertaining to federal marijuana, hashish, firearms, currency and tax laws.

On March 13, 1985, respondent pleaded guilty to four counts of the indictment[1] and the government agreed to dismiss all remaining charges against respondent, as well as not prosecute him for any additional violations of criminal law arising out of any of the offenses alleged in the indictment.

As part of the plea agreement, respondent agreed to cooperate fully with the government in its investigation regarding the importation and distribution of controlled substances. As part of this cooperation obligation, on March 13, 1985, respondent gave to the government all the personal books, papers and other documents called for in the subpoena *duces tecum* which are at issue now before this Court. Accordingly, the government now has possession of the same documents it is asking that this Court rule not protected by the Fifth Amendment privilege. Since respondent has waived his Fifth Amendment right as to these documents, and provided them to the government, this case is now moot.

The Solicitor General, having been advised of these developments, agrees that this case is now moot. The Solicitor

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[1]Respondent pleaded guilty to the following offenses charged in the indictment: engaging in a continuing criminal enterprise (21 U.S.C. 848); a firearms violation (26 U.S.C. 5861(d) and 5871); a currency violation (31 U.S.C. 5316); and filing a false corporate tax return (26 U.S.C. 7206(1)). *See* Indictment in *United States v. Robert Bruce Reckmeyer, et al.*, counts 2, 14, 20, 40 *Joint Appendix* at 3-66.

General has indicated that petitioner will file a suggestion of mootness, seeking an order vacating the opinion of the court of appeals in this case. *See United States v. Munsingwear*, 340 U.S. 36 (1950). Respondent does not oppose such an order.

Accordingly, respondent prays that this case be dismissed as moot.

Respectfully submitted,

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